

Remarks

Claims 44-67 are pending and have been rejected by the Examiner. Claims 44, 50, 51, 56, 62 and 65-67 have been amended. Reconsideration and allowance are respectfully requested.

I. Election/Restriction

The Examiner has made the restriction requirement final. Applicants withdraw claims 1-43 without prejudice.

II. Rejection of claims 44-67 under 35 U.S.C 102

The Examiner has rejected claims 44-67 under 35 USC 102(b) as being anticipated by Lange et al. (US 6,751,499) ("Lange"). Applicants respectfully traverse this rejection.

Lange was not patented or published more than one year prior to the filing date of Applicants' application, as required by 35 U.S.C 102(b). Therefore, the rejection under 35 U.S.C. 102(b) is improper.

Lange also fails to anticipate these claims.

Amended claims 44 and 56 are directed to surgical drains for draining fluid from a patient's body. Both require "an elongated conduit configured to be implanted in and to drain fluid from a patient's body." The IV fluid container to which the Examiner points does not meet the requirements of this amended element. It does not "drain fluid from a patient's body," nor is it "configured to be implanted in . . . a patient's body." To the contrary, Lange states that the fluid container is connected to a tube that "delivers the medication to the patient"

(emphasis added). Col. 26, lines 22-25. Further, IV fluid containers are commonly configured to be used outside of a patient's body.

Claims 44 and 56 also both require a sensing system that detects spectral energy from tissue within the patient's body. Lange also does not disclose such a system, nor has the Examiner contended otherwise.

Claims 45-55 and 57-67 each depend from claim 44 or 56 and thus are also not anticipated by Lange. Further, the Examiner has not explained why claim 49 is anticipated by Lange. In the event that the Examiner still asserts this contention, notwithstanding the remarks made above about claim 44 (from which claim 49 depends), Applicants respectfully request that they be provided with a statement of these reasons and a full opportunity to respond to them.

III. Conclusion


Applicants respectfully submit that the application is now in condition for allowance, which the Applicants respectfully solicit. If further prosecution of the application can be facilitated through interview between the Examiner and the undersigned, the Examiner is requested to telephone the undersigned at the Examiner's convenience.

A petition for a three-month extension of time under 37 C.F.R. 1.136 is being filed contemporaneously herewith. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to

Deposit Account 501946 and please credit any excess fees to such deposit account and reference attorney docket no. 64693-092.

Respectfully submitted,

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